Alberta Advisory Council on Women's Issues

RECOMMENDATIONS
TO THE GOVERNMENT OF ALBERTA
ON THE MAINTENANCE ENFORCEMENT PROGRAM

JANUARY 1989

PRESENTED TO

THE HONOURABLE ELAINE MCCOY, Q.C.
THE MINISTER RESPONSIBLE FOR WOMEN'S ISSUES

BY

THE ALBERTA ADVISORY COUNCIL ON WOMEN'S ISSUES

Alberta Advisory Council on Women's Issues

January 27, 1989

The Honourable Elaine McCoy, Q.C.
Minister Responsible for Women's Issues
Room 104
Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Ms. McCoy:

On behalf of the Alberta Advisory Council on Women's Issues, I am pleased to present recommendations aimed at strengthening the Maintenance Enforcement Program (MEP).

These recommendations respecting Maintenance Enforcement, are the latest in a series of recommendations presented to the Alberta Government by the Council since October, 1987. To date, the Council has made 51 recommendations for action on issues ranging from quality day care to the needs of immigrant and visible minority women.

The Council looks forward to the Government response on the MEP recommendations.

Yours sincerely,

Margaret Leahey

Margaret Leahey, Chairperson
Alberta Advisory Council
on Women's Issues

Suite 1004, Highfield Place, 10010 - 106 Street, Edmonton, Alberta T5J 3L8 Telephone (403) 422-0668

ALBERTA ADVISORY COUNCIL ON WOMEN'S ISSUES - REVIEW OF THE MAINTENANCE ENFORCEMENT PROGRAM

INTRODUCTION

The past few decades has seen a dramatic rise in the frequency and obtainability of divorce in North America. Now socially sanctioned, a substantial number of Alberta marriages will end in divorce. These societal changes affect family composition, traditional family roles and most importantly, the economic future primarily of women and single parent families. Following divorce, most children reside with their mothers. 16 per cent of divorced fathers retained the custody of their children across Canada in 1980. 69.1 per cent of all children living in one-parent families in 1975 lived below acceptable poverty guidelines and this number is rising. One-parent families are vulnerable to poverty. In 1986, more than 1,000,000 youngsters under the age of 16 were being raised in a single-parent family under the poverty line. Family poverty doubled in Alberta between 1981 and 1984 and a single-parent family headed by a female in Alberta currently has a 50 per cent chance of living below the poverty line. Furthermore it has been estimated that between 56 and 67 per cent of Alberta fathers do not pay child support as regularly as required under the law. Therefore, it is a virtual given that following the maintenance decision in a Court or by agreement between the parties, women have less money available to live on than their husbands regardless of the number of children in their custody. The unfortunate result is a drastic reduction in the standard of living experienced by these women and their children even if they can collect support required to be paid under the Court Order, or pursuant to a Separation Agreement or other contractual Agreement dealing with the payment of support or maintenance. For those women who cannot collect support payments at all, or find it difficult to enforce support payments, programs such as the Maintenance Enforcement Program provide the only avenue possible towards assisting in the re-establishment of adequate standards of living following divorce.

According to Statistics Canada, there was a 15 per cent increase in the number of divorces in Alberta during 1986, compared with 1985. This figure is based on the rate of divorce per 100,000 married women. In 1986, there were a total of 9,386 divorces in Alberta, which figure represents a significant increase from 1966 and 1976 figures which were 1,567 and 5,697 respectively.

Alberta's Maintenance Enforcement Act was enacted in June of 1985 to enforce maintenance payments awarded by the Court. The Maintenance Enforcement Program (MEP) is located in Edmonton and operates as a branch of the Attorney General's Department under the auspices of Director, Gerald Leibel.

The Maintenance Enforcement Program in Alberta was introduced in two phases. The first began February 1st, 1986, so that individuals who were previously awarded maintenance but whose maintenance Orders were in arrears could register with the Program. The second phase became operational January 1st, 1987. At that time, ongoing maintenance Orders began to be automatically entered with the program. The Creditor spouse is required to register with the Program by filling out appropriate Registration forms. They can also Opt-Out of the Program by again filling out the appropriate form. Support Orders registered with the Maintenance Enforcement Program are enforced by the Maintenance Enforcement authorities and all payments are made to the Edmonton Office. About 25 per cent of individuals choose to Opt-Out of the Program.

According to MEP officials, staffing levels have been increased and by March 31, 1989, there will be 29 Collection Officers and 7 Supervisors (an increase from 15 and 5 respectively). As a result each Collection Officer's caseload will be reduced to approximately 610 files.

According to the Attorney General's Department, MEP will benefit not only spouses attempting to collect but also Taxpayers - "this Program will represent a significant saving to Taxpayers, since less money has to come from the public purse for Social Assistance. Instead, the responsible spouse will be paying a fair share for the support of the other parent and their dependents. Through Reciprocal Enforcement Agreements with the other Provinces and many of the United States there are fewer safe havens for irresponsible spouses who would otherwise ignore their obligations."

CONCERNS REGARDING THE MAINTENANCE ENFORCEMENT PROGRAM

The Alberta Advisory Council on Women's Issues has heard various and numerous concerns from Albertans regarding the Maintenance Enforcement Program. Some of the more common concerns will be examined. These include:

1. **The Ten-day hold on cheques.**

   The Maintenance Enforcement Program has a policy of withholding cheques for ten Banking days prior to issuance of a Government cheque to the Creditor. Individuals have expressed frustration with regard to this procedure.

The complainants state that the withholding of cheques puts another obstacle in their way of prompt payment by the Debtor spouse. They state that this ten-day delay and a possible further ten days caused by mail adds stress to an already distressed financial situation. These Creditors want to be able to receive money owed to them as soon as it is paid or alternatively, on the actual due-date pursuant to their Court Order.

Mr. Leibel does not believe that this ten-day period is unreasonable since it insures the Creditor of a bankable cheque. He reasons that a third-party cheque could not be cashed at a Bank any sooner than ten days and consequently, MEP's policy is justified.

2. Access to file information.

Another concern which has been expressed to the Alberta Advisory Council on Women's Issues is that Creditors must write to MEP in order to receive specific file information.

We are informed that this current policy was implemented in September of 1987 and that prior to that date, it was possible to get information over the telephone. According to Mr. Leibel, this measure ensures client confidentiality as it is otherwise theoretically possible for individuals to phone MEP, falsely identify themselves, and request information on another person's file.

By requiring written requests, MEP can check addresses and verify signatures to ensure confidentiality. While Mr. Leibel states that a reply to a specific question should be in the mail within five days, we have determined that delays are often considerably longer. One individual has indicated to the Council that she waited 36 days to hear back from the MEP office.

3. 90 Day-Stay

Some claimants are concerned with the possibility of a 90-day stay which can be put into effect once an application for a variation of a maintenance Order is brought before a Court. During this 3 month period the Debtor doesn't have to pay maintenance.

Under the Divorce Act, 1985, either party (Creditor or Debtor) may apply for a variation of the Maintenance Order upon a significant change in circumstance.

Such application would enable the Court to suspend the Garnishment or continuing attachment on any condition the Court considers appropriate for a period specified in the Order. The result of such a stay is that the collection of support is postponed for up to three months and the Creditor goes for a lengthier period without receiving any money. The Creditor spouse then often faces additional costs of hiring a lawyer to represent him or her in Court. The effect of suspension of payment on an ongoing basis during the stay often results in the Debtor being relieved of the obligation to pay over that period if arrears are struck by the Court. Many Claimants feel this is unfair, as it allows the Debtor to get what they consider to be a free ride for an additional three-month period. Many Creditors feel that if this provision on the Act was struck down it would ensure that Court applications are dealt with more expeditiously by Debtor spouses.

4. Staffing

There has been concern that the MEP office is understaffed. However, the Attorney General's Department has recently approved more staff positions and it is expected that by March 31, 1989 there will be 29 Collection Officers and 7 supervisors on staff.

5. Other Agreements

Only Court Orders are enforced by MEP. Other forms of maintenance agreements, such as Separation Agreements and other agreements in writing requiring the payments of maintenance are not collectable by MEP.

Creditors feel that because Revenue Canada recognizes payments made pursuant to agreements in writing for tax purposes, such payments should be enforced through the Maintenance Enforcement Program. One difficulty with such payments is that they cannot be enforced according to law without the Creditor suing on the Agreement and obtaining Judgment, whereas Court Orders are already Judgments of the Court.

6. Difficulties with MEP office being centralized in Edmonton.

Many women outside of Edmonton feel it is difficult to deal with the Maintenance Enforcement Program due to their lack of proximity to Edmonton. These individuals all have close proximity to Court Houses and many

believe that there should be a Maintenance Enforcement staff person in each Court House throughout the Province at least for informational purposes. They say the Toll Free Number is useful for general information but because they cannot receive answers to specific questions regarding their claim over the phone, local MEP offices would be beneficial.

7. Concern with the continuing attachment provisions through MEP have the result of receiving less money under a Garnishee than regular Garnishee proceedings.

Continuing attachment through the Maintenance Enforcement Program via Garnishee receives less funds on a monthly basis for the Creditor than Garnishee of a general nature available to any Creditor by operation of law and through the provisions of the Rules of Court of Alberta.

In terms of continuing attachment - Garnishee - it should be noted that any Court Order for maintenance is subject to Garnishee if it is in default. Generally, Garnishee is legislated by certain Provincial Statutes and the Alberta Rules of Court which provides in Rule 483 that there is no exemption from Garnishee available to a Garnishee Summons issued on any Judgment or Order for the payment of alimony or maintenance payable by a husband to his wife or former wife, as the case may be, or for the payment or maintenance for any child of the Debtor.

Notwithstanding this regulation, the regulations of the Maintenance Enforcement Act provide that the sum of $525.00 plus 30% of the part of the net wages or salary that exceeds $525.00 is exempt from attachment during each month. Consequently, execution proceedings through continued Garnishee via Maintenance Enforcement attaches to considerably less money on a monthly basis than ordinary Garnishee proceedings, which would attach to all of the income of the Debtor.

8. Payment of Arrears - Child Support.

The Maintenance Enforcement Act provides that the Director of Maintenance Enforcement may refuse to enforce more than three years of arrears of maintenance payable under a maintenance order. Whether the Director wishes to enforce over three years is solely within his discretion. Most claimants have no difficulty with that provision, as they feel that the Director will use his discretion to enforce payments of a more long-standing nature when he deems it advisable.

However, Claimants are concerned with Section 15 of the Act, which states that maintenance orders take priority over any unsecured judgment debt of the Debtor other than any other maintenance orders. However, this priority does not apply to arrears of maintenance payable under a maintenance order that were payable more than three years before the date on which the Director or Creditor initiated the current proceedings to enforce the maintenance order. Many Creditors feel that this is a very restrictive limitation, especially in the initial stages of the Maintenance Enforcement Act, as it clearly restricts their ability to collect arrears which are older than three years in duration.

CONCLUSION

According to the Alberta Attorney General's Annual Report, 1985/86, MEP is responsible for the enforcement of maintenance orders and the collection and disbursement of monies owed as a result of maintenance orders registered with the Program. As of May, 1988, the Maintenance Enforcement Branch was collecting on 43.7% of all registered files. This left 56.3% of registered maintenance orders not being collected upon. The word "collected" does not necessarily mean payments are being received in full. If, for example, the Debtor pays $40.00 on a $200.00 order, then MEP considers these funds as collected upon.

The Honourable Mr. J. Horseran, then Alberta's Attorney General, is quoted in the June 21st, 1988, edition of Alberta Hansard as saying "The rate of collection recovery on new Orders - those registered since January of 1987, is 86.4%". According to Mr. Leibel, those Orders awarded prior to January of 1987, are much more difficult to collect upon.

It is the consensus of the majority of individuals and groups who have made representations to the Alberta Advisory Council on Women's Issues that the Program is certainly better than nothing and is welcomed by Alberta Creditors. Most applaud the Province for a good start at an effective system. However, it is their view that certain improvements to the Maintenance Enforcement Program could be made and should be considered by the Province of Alberta as quickly as possible.

MEP RECOMMENDATIONS

1. The Alberta Advisory Council on Women's Issues recommends to the Province of Alberta that steps be taken to provide immediate payment to claimants thereby eliminating the 10-day hold on cheques. It is the recommendation of the Council that an automatic Debit system be implemented and/or a Fund be created in order that the offices of MEP might advance cheques to Creditors in advance of the present 10-day clearing period required for Debtor's cheques.

   Rationale: The Alberta Advisory Council on Women's Issues is of the view that if such a Fund or automatic Debit system were established, the benefits of a more efficient system and Creditors receiving cheques promptly will be to the advantage of individual Creditors and also to the advantage of the MEP systems as more immediate reporting of delinquency would be created.

2. The Alberta Advisory Council on Women's Issues recommends that a policy be implemented at MEP to provide for the dissemination of information regarding individual claims via the present MEP Toll Free telephone number. It is recommended that in order to protect confidentiality, an individual MEP identification number be given to the Claimant and provided to MEP offices before information would be released to the Claimant.

   Rationale: It is felt by this Council that such a system would alleviate many of the concerns of Claimants who simply feel that they do not have sufficient information. Also, the use of telephone information dissemination will assist MEP in its collection efforts, as Creditors often receive information regarding Debtors which they may be hesitant to forward in writing to MEP.

3. It is recommended that MEP develop an explanation code to insert on all cheques disseminated to Creditors to assist them in understanding the basis of any payment received by them.

4. It is recommended by the Alberta Advisory Council on Women's Issues that in the event a stay is requested pursuant to the Maintenance Enforcement Act, ongoing payments be required to be made for the period to MEP of the application to vary.

Rationale: This would result in the funds being kept on hand and readily available to the Creditor if the Debtor is unsuccessful in his Court application. It would also ensure the goodwill of the individual Debtor and would alleviate any benefits to the Debtor of relief from payments over the stay period.

5. It is recommended by the Alberta Advisory Council on Women's Issues that the Maintenance Enforcement Act be amended to provide for the registration of support payments required to be made under Separation Agreements or other contractual Agreements so long as the Agreements are made by the parties having separate and independent legal advice.

6. It is recommended by the Alberta Advisory Council on Women's Issues that the Maintenance Enforcement Program place an officer at all Provincial Court Houses throughout the Province of Alberta. These officers shall have access to, and assist with, individual MEP Claimant information and may make payments to creditors in their jurisdiction.

   Rationale: It is felt by the Alberta Advisory Council on Women's Issues that this will considerably shorten time delays caused by mailing of cheques upon payments being made. It is recommended that sufficient staff be hired in each Judicial District throughout the Province to accomplish such a task.

7. It is recommended by the Alberta Advisory Council on Women's Issues that child support arrears be enforced by MEP in their entirety without Director discretion. Further, that the Act be amended to provide the entire maintenance arrears vis-a-vis children regardless of the length of time over which they are accumulated be afforded the same priority provisions afforded three years worth of arrears under Section 15 of The Maintenance Enforcement Act.

The Council commends the Alberta Government for addressing staffing problems at the Maintenance Enforcement office in Edmonton. According to MEP officials, staffing levels have been increased and by March 31, 1989, there will be 29 Collection Officers and seven supervisors (an increase from 15 and 5 respectively). As a result each Collection Officer's caseload will be dramatically reduced, enabling officers to aid Claimants in a more efficient manner.

QUESTIONS AND ANSWERS

The following questions and answers are taken from a pamphlet published by the Attorney General's Department on the Maintenance Enforcement Program.

1. What kinds of maintenance Orders are covered by MEP?

   All Court ordered maintenance agreements are covered. This includes those providing for child support and spousal support.

2. I am owed back-support payments. How much of this money can be collected?

   The Director of MEP will attempt to collect arrears as far back as three years. But debts do not disappear after this period unless ordered by a court. At the Director's discretion, up to ten years of payments may be collected.

3. What steps can be taken to collect maintenance payments?

   The Director of Maintenance Enforcement can demand a Statement of Finances from any individual who is behind in making maintenance payments. He has the authority to attach a portion of the Debtor's monthly income or seize property.

4. What if I don't know where my former spouse is living?

   The Director of Maintenance Enforcement has the authority to examine Motor Vehicle registrations and Alberta Health Care records in order to obtain addresses, and effective November 30th, 1987, Provincial MEP Branches were given access to Federal Data Banks. This service is available to assist the Provinces and Territories in enforcing family support payments where support is not being paid and the person should pay and cannot be located (example - if the Debtor has moved to another Province or Country, the Federal Tracing Information System can be used to help locate the missing Debtor). The release of Federal information is limited to the address of missing persons and names and addresses of their last five employers. This information can only be given to authorized Courts, Enforcement Officers and the Police.

5. What if my former spouse has moved to another Province or Country?

Alberta's MEP works most effectively where both parties live in the Province. Some other Provinces have similar legislation, and access to these is gained by registering with Alberta's Director of MEP. If your spouse resides in a Canadian Province without its own MEP Program or lives outside of Canada you should register with the Director who will make every effort to have your Order enforced.

6. How are payments made?

A Trust Account system is used. Simply put, the person who owes money sends a cheque to the Director of MEP. After the cheque clears the Bank, the Director issues a Government cheque which is sent to the individual or family entitled to maintenance support.

7. I am on Social Assistance. Does this effect my ability for MEP?

No. The Maintenance Enforcement Program is available to all Albertans and may be of special help to those receiving Social Assistance. It is important, however, for you to check with your Social Worker before you complete your registration. Part or all of your maintenance payments and arrears, may be payable to the Crown, while you are receiving benefits.

8. Do I have to come to Edmonton to complete my registration?

No. The Program is based in Edmonton but is designed so that you will be able to deal with us by mail or by using our Toll Free Telephone Line.

9. What will it cost me to register?

There are no registration costs of any kind.

10. Where can I obtain information forms?

Information can be obtained through the MEP Toll Free Line -1-800-642-3803. In Edmonton, call 422-5554. Registration forms can be sent to you by our Information Line staff or can be picked up at Alberta Court Houses and Provincial Buildings.

SOURCES

Alberta Women's Secretariat, "A Statistical Portrait of Alberta Women", October, 1986.

Income Distributions by Size in Canada, 1985, Statistics Canada, 1985.

"Alberta Facts", Number One, January 1987.

Discussion of the Federal Government's Proposal Regarding Canada's Economic Situation and Social Programs, March 1985., Canadian Advisory Council on the Status of Women.

"The Advocate", Vol. 12, Issue 6., Alberta Association of Social Workers Publication, August, 1987.

"Progress Against Poverty", National Council of Welfare., April 1987.

"1986 Poverty Lines", Estimates by the National Council on Welfare, June 1986.

"The Economic Realities of Women Under the Manitoba Family Maintenance Act", Manitoba Advisory Council on the Status of Women, October, 1985.

Provincial Symposium on Women's Issues, November 1988. Session on the Maintenance Enforcement Program.

Many individual Maintenance Enforcement Registrants who have taken the time and effort to make submissions to the Council. (The Maintenance Enforcement Act, Statutes of Alberta 1985 CM-0.5).

The Alberta Rules of Court.

The Execution Creditor's Act.